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Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880

**PLAINTIFF FEDERAL TRADE
COMMISSION'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5(f), Plaintiff, the Federal Trade Commission, respectfully submits this Administrative Motion to Consider Whether Another Party's Material Should be Sealed in connection with Plaintiff's Emergency Motion for a Temporary Restraining Order (attached hereto, "Plaintiff's Emergency Motion") and documents filed in support of.

Certain portions of Plaintiff's Emergency Motion contain information obtained from Defendants' Microsoft Corporation ("Microsoft"), Activision Blizzard, Inc. ("Activision"), and NVIDIA Corporation ("Nvidia"), and Sony Interactive Entertainment ("Sony") during the course of the FTC's investigation regarding Microsoft's proposed acquisition of Activision. Microsoft, Activision, Nvidia, and Sony designated certain of this information as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2. Other portions of Plaintiff's Emergency Motion contain information that was obtained during the course of litigation discovery in In the matter of Microsoft Corp. and Activision, Blizzard, Inc., before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9412, and that the producing party designated as Confidential pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 ("Administrative Protective Order"). Accordingly, Plaintiff seeks to file under seal:

Document	Portions to Be Filed Under Seal	Designating Party
Plaintiff's Emergency Motion	Page i, Portions of Lines 14–15	Microsoft and Activision
Plaintiff's Emergency Motion	Page i, Portions of Lines 17–18	Microsoft and Activision
Plaintiff's Emergency Motion	Page 1, Portions of Line 2	Microsoft and Activision

Plaintiff's Emergency Motion	Page 1, Portions of Lines 11–12	Microsoft and Activision
Plaintiff's Emergency Motion	Page 2, Portions of Lines 21–22	Microsoft and Activision
Plaintiff's Emergency Motion	Page 3, Portion of Lines 6–7	Microsoft and Activision
Plaintiff's Emergency Motion	Page 5, Portions of Lines 8–24, Page 6, Portions of Lines 1–2	Microsoft and Activision
Plaintiff's Emergency Motion	Page 6, Portions of Lines 5–8	Microsoft and Activision
Plaintiff's Emergency Motion	Page 6, Portion of Line 25	Microsoft and Activision
Plaintiff's Emergency Motion	Page 12, Portions of Lines 12–19	Microsoft
Plaintiff's Emergency Motion	Page 13, Portions of Lines 13–15	Microsoft and Activision
Plaintiff's Emergency Motion	Page 14, Portions of Lines 7–9, 11–13	Microsoft and Activision
Plaintiff's Emergency Motion	Page 14, Portions of Lines 19–24	Microsoft and Activision
Plaintiff's Emergency Motion	Page 15, Portions of Lines 9–13, 22, 24–26	Microsoft and Activision
Plaintiff's Emergency Motion	Page 15, Portions of Lines 20–21, 27 – Page 16, Portion of Line 1	Nvidia

Plaintiff's Emergency Motion	Page 16, Portion of Lines 5–6	Microsoft and Activision
Plaintiff's Emergency Motion	Page 16, Portions of Lines 16–18, 22–24	Microsoft and Activision
Plaintiff's Emergency Motion	Page 17, Portions of Lines 6–8, 10–11	Microsoft and Activision
Plaintiff's Emergency Motion	Page 17, Portion of Line 12	Sony
Plaintiff's Emergency Motion	Page 18, Portions of Lines 18–20	Microsoft
Plaintiff's Emergency Motion	Page 18, Portions of Line 23 – Page 19, Portion of Line 6	Microsoft
Plaintiff's Emergency Motion	Page 19, Portions of Lines 11, 13– 19	Activision
Plaintiff's Emergency Motion	Page 19, Portions of Lines 25 – Page 20, Portions of Line 3	Microsoft and Activision
Plaintiff's Emergency Motion	Page 19, Portions of Lines 6–8	Microsoft and Activision
Plaintiff's Emergency Motion	Page 20, Portions of Lines 9–12	Sony
Plaintiff's Emergency Motion	Page 20, Portions of Lines 17–19	Microsoft
Plaintiff's Emergency Motion	Page 20, Portion of Line 20 – Page 21, Portion of Line 4	Microsoft and Activision
Plaintiff's Emergency Motion	Page 21, Portions of Lines 12–15, 18–19, 20–23	Microsoft and Activision

1	Plaintiff's Emergency Motion	Page 22, Portions of Lines 4–6	Microsoft and
2			Activision
3	Plaintiff's Emergency Motion	Page 22, Portions of Lines 12–18	Microsoft
4	Plaintiff's Emergency Motion	Page 22, Portion of Lines 19–24	Microsoft
5	Plaintiff's Emergency Motion	Page 23, Portion of Lines 4–9	Microsoft
6	Declaration of Jennifer Fleury	Page 1, Portions of Lines 11 and	Microsoft
7	in Support of Plaintiff Federal	13	
8	Trade Commission's		
9	Emergency Motion for a		
10	Temporary Restraining Order		
11	("Fleury Declaration")		
12			
13	Fleury Declaration	Page 2, Portions of Lines 10–11	Microsoft
14			
15	Fleury Declaration	Page 2, Portions of Lines 18–19	Nvidia
16	Fleury Declaration	Page 2, Portion of Line 22	Nvidia
17	Fleury Declaration	Page 2, Portion of Line 24	Activision
18	Fleury Declaration	Page 3, Portions of Lines 2–3	Activision
19	Fleury Declaration	Page 3, Lines 5–7	Sony
20	Fleury Declaration	Page 3, Portion of Line 9	Microsoft
21	Fleury Declaration	Page 3, Portion of Line 11	Microsoft
22	Fleury Declaration	Page 3, Portion of Line 13–14	Sony
23	Fleury Declaration	Page 4, Portion of Line 16	Microsoft
24	Exhibit A	Entire Document	Microsoft
25	Exhibit B	Entire Document	Microsoft
26			
27			
28			

PLAINTIFF FEDERAL TRADE COMMISSION'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER
 ANOTHER PARTY'S MATERIAL SHOULD BE SEALED
 CASE NO. 3:23-cv-2880

Exhibit C: Expert Report of Robin S. Lee, Ph.D. (“Lee Report”)	Entire Document	Microsoft and Activision ¹
Exhibit I	Entire Document	Microsoft and Activision
Exhibit J	Entire Document	Microsoft
Exhibit K	Entire Document	Microsoft
Exhibit M	Entire Document	Nvidia
Exhibit N	Entire Document	Nvidia
Exhibit O	Entire Document	Activision
Exhibit P	Entire Document	Activision
Exhibit Q	Entire Document	Sony
Exhibit R	Entire Document	Microsoft
Exhibit S	Entire Document	Microsoft
Exhibit T	Entire Document	Sony
Exhibit U	Entire Document	Microsoft
Exhibit V	Entire Document	Microsoft
Exhibit Y	Entire Document	Microsoft
Exhibit Z	Entire Document	Microsoft and Activision

¹ The Lee Report contains non-party confidential information as well. While not all Lee Report quotes reveals information from documents designated by Microsoft, Activision, Nvidia, or Sony as confidential, these designated materials are so intertwined with Dr. Lee’s analysis as to make redaction by the FTC impracticable.

Exhibit AA	Entire Document	Microsoft
Exhibit AB	Entire Document	Microsoft
Exhibit AC	Entire Document	Microsoft
Exhibit AD	Entire Document	Microsoft

Materials and documents may be provisionally filed under seal pursuant to Civil Local Rule 79-5(f) when the document, or portions thereof, “has been designated as confidential by another party or non-party.” L.R. 79-5(f). Plaintiff has redacted the above-referenced yellow-highlighted portions of its Emergency Motion and documents filed in support thereof because Microsoft or Activision has designated the information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiff has redacted the above-referenced green-highlighted portions of its Emergency Motion and documents filed in support thereof because Nvidia has designated information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiffs has redacted the above-referenced blue-highlighted portions of tis Emergency Motion and documents filed in support thereof because Sony has designated information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiff takes no position on the merits of sealing Microsoft’s, Activision’s, and non-parties’ designated material.

In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of Plaintiff’s Emergency Motion and documents filed in support therefor accompany this

Administrative Motion. In accordance with Local Rule 7-11, Plaintiff has also filed a Proposed Order herewith.

Original filing date: June 12, 2023

Respectfully Submitted,

Corrected filing date: June 13, 2023

/s/ James H. Weingarten

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